International Typographical Union, Dayton Typographical Union, Local No. 57, AFL-CIO *and* The Reynolds and Reynolds Company and Graphic Arts International Union, Local No. 508, O-K-I. Case 9-CD-387

April 6, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by The Reynolds and Reynolds Company, herein called the Employer, alleging that International Typographical Union, Dayton Typographical Union, Local No 57, AFL-CIO, herein called ITU, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Graphic Arts International Union, Local No. 508, O-K-I, herein called GAIU.

Pursuant to notice, a hearing was held before Hearing Officer Richard F. Czubaj on December 5, 15, and 23, 1980, and January 12, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, all parties filed briefs.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, an Ohio corporation, is engaged in the printing of commercial and business forms. During the past 12 months, in the course and conduct of its business operations, the Employer sold and shipped goods and materials valued in excess of $50,000 from its Dayton, Ohio, facility directly to points outside the State of Ohio. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that International Typographical Union, Dayton Typographical Union, Local No. 57, AFL-CIO, and Graphic Arts International Union, Local No. 508, O-K-I, are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In October 1980,[1] the Employer purchased and installed in its Dayton, Ohio, facility a new phototypesetting system known as a Comp-Edit system. This system consists of an input keyboard, similar to a standard typewriter keyboard, for entering copy into the typesetting system; a video display screen for reviewing material placed in the system; a storage system for retaining and then retrieving copy entered into the system; and prepared programs for certain standard typesettings. A Comp-Edit operator can, through the use of the various components of this system, prepare leaflets and business forms for printing, using various styles and sizes of type, and can use the Comp-Edit machine to indent, space, and justify (set margins) the characters in the leaflet or form to be printed. The Employer intends to utilize the Comp-Edit ystem in lieu of certain other typesetting systems now in use at its Dayton facility.

By letter dated October 15, the Employer initially assigned the work in dispute to employees represented by ITU based on its belief that the work fell within the jurisdiction of ITU as set forth in ITU's collective-bargaining agreement with the Employer and that the skills of those employees were those necessary to operate the new phototypesetting system. Upon learning of this assignment, GAIU notified the Employer of its objection thereto and, on October 22, filed a grievance alleging that the assignment was in violation of GAIU's agreement with the Employer and that the work in dispute should be awarded to employees represented by GAIU.

Subsequently, the Employer, by letter dated October 30 addressed to the officers of the two Unions, expressed its concern over submitting this question to bipartite arbitration between the Employer and GAIU, and requested that the parties voluntarily agree to tripartite arbitration of the dispute. GAIU responded that it would continue to pursue its grievance, and ITU, in its response dated November 5, stated:

> Dayton Typographical Union will not submit to three party arbitration, as we feel the decision by the Company to place the new equipment in our jurisdiction is proper, and warranted by contract. Dayton Typographical Union is prepared to take the legal steps neces-

[1] Unless otherwise noted, all dates hereinafter are in 1980.

sary including strike action to protect our jurisdiction.

On November 12, the Employer filed the charge in this proceeding.

B. *The Work in Dispute*

The parties stipulated that the work in dispute consists of the operation of the phototypesetting machine referred to as the Comp-Edit machine manufactured by the A-M International Company.

C. *The Contentions of the Parties*

The Employer contends that it made the assignment of the work in dispute to employees represented by ITU based on its prior assignments of the same or similar work at other plants elsewhere in the country and because of the skills involved in the work and the skills of the members of ITU. The Employer argues that the skills possessed by employees represented by ITU make for greater efficiency in the handling of the Employer's work and that the training period needed to reach peak efficiency would be shorter because of the background and skills possessed by those employees.

ITU agrees with the Employer that the work in dispute should be assigned to employees represented by it. ITU claims that it is current industry practice that in a dispute between a typographical union and another union over the operation of phototypesetting machines, the typographical union is awarded jurisdiction over the work. In addition, ITU claims that the general and specific skills of its members blend in with the skills necessary to operate the phototypesetting equipment.

GAIU contends that the notice of hearing should be quashed pending resolution of its grievance filed against the Employer. On the merits of the dispute, GAIU contends that the work in dispute falls within its jurisdiction as set forth in its collective-bargaining agreement with the Employer. It further asserts that, if the disputed work were awarded to employees represented by it, the Employer would realize a greater economy and efficiency than if the work were assigned to employees represented by ITU. GAIU notes that its members employed by the Employer possess some of the skills necessary to operate the Comp-Edit phototypesetting equipment and further argues that, since a substantial percentage of the work coming from the phototypsetting equipment will go to employees represented by GAIU, the operation of the phototypesetting equipment should naturally flow to employees represented by it.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

It is uncontested that in a letter dated November 5, signed by Paul A. Stewart, president of ITU, and sent to Ralph Johnson, the Employer's assistant vice president for corporate industrial relations, ITU threatened "to take the legal steps necessary including strike action to protect our jurisdiction." The parties stipulated, and we find, that probable cause exists to believe that a violation of Section 8(b)(4)(D) has occurred.[2]

The parties stipulated, and we find, that there exists no agreed-upon method binding on all the parties for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. As noted above, GAIU contends that, notwithstanding the failure of the parties to agree on a tripartite method for voluntary adjustment of the dispute, the Board should quash the notice of hearing pending completion of arbitration of its grievance alleging that the disputed work is covered by the jurisdictional clause in its contract with the Employer. GAIU argues that Board consideration should be stayed until that time because, in the event the arbitrator rules against GAIU's position, the 10(k) proceeding would be moot. We do not agree. As ITU has not agreed to participate in and be bound by the arbitrator's award therein, that award cannot serve to resolve the dispute.[3] Moreover, the Board can adequately interpret the jurisdictional clause in the GAIU contract as it considers the various factors in resolving a work assignment dispute.[4] Accordingly, GAIU's motion to quash is hereby denied and we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work

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[2] We note it is irrelevant that the party making the threat is the one presently doing the disputed work. *International Union of Operating Engineers, Local 542, AFL-CIO (C. J. Langenfelder and Son, Inc.)*, 241 NLRB 562 (1979); *Hod Carriers' Union Local No. 116, Laborers' International Union of North America, AFL-CIO (E. & S. Masonry, Inc.)*, 187 NLRB 482, 483 (1970).

[3] *Theatrical Protective Union No. One, I.A.T.S.E., AFL-CIO (American Broadcasting Company, A Division of American Broadcasting Companies, Inc.)*, 249 NLRB 1090 (1980).

[4] See *N.L.R.B. v. C & C Plywood Corporation*, 385 U.S. 421 (1967).

after giving due consideration to relevant factors.[5] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[6]

The following factors are relevant in making the determination of the dispute before us:

1. Certifications and collective-bargaining agreements

There are no orders or certifications of the Board awarding jurisdiction of the work in dispute to members of either of the Unions involved in the present proceeding.

Both ITU and GAIU have collective-bargaining agreements with the Employer. ITU's contract, effective from March 1, 1980, to February 28, 1983, contains the following jurisdictional language:

> Jurisdiction of the Union and the appropriate unit of collective bargaining is defined as including all composing room work and includes classification such as: hand compositors; typesetting machine operators; makeup men; bank men; stonehands; proofpress operators; markup men; lineup men; machinists for typesetting machines; operators; and machinists on all devices which cast or compose type, or slugs, or film; operators of tape perforating machines and recutter units for use in composing or producing types; operators of all phototypesetting machines (such as Fotosetter; Photon, Linofilm, Monophoto, Coxhead Liner, Filmotype, Typo and Hadego); employees engaging in proofing, waxing and paste-makeup with reproduction proofs, processing the product of phototypesetting machines, development and waxing; paste-makeup all type, hand-lettered illustrative, border and decorative material constituting part of the copy ruling; photoproofing; correction, alteration, and imposition of the paste-makeup serving as the completed copy for the camera used in the plate-making process. Paste-makeup for the camera as used in this paragraph includes all photostats (used in the offset or letter press work and includes all photostats and positive proofs of illustrations such as Velox) where positive proofs can be supplied without sacrifice of quality or duplication of efforts. The Employer shall make no other contract covering work as described above, especially no contract using the word "stripping" to cover any of the work above mentioned.

The GAIU contract, which runs from June 1, 1980, to May 31, 1982, includes the following jurisdictional clause:

> Article 3—JURISDICTION
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> SECTION 3.1—All production employees who are on the payroll (including working foremen) (but excluding artists, proofreaders, file clerks and people performing operations on nonsaleable work) performing any of the following work shall without limitation be covered by the terms of this contract. All work practices, operations related to Lithography, offset (including dry or wet), Photoengraving; used for the purpose of printing. Only employees of the bargaining unit shall perform work under the jurisdiction of this union.

In addition, the GAIU agreement contains a specific wage classification for a "VariTyper," which, GAIU contends, refers specifically to the Comp-Edit operator.

The Employer and ITU argue that the jurisdictional clause in the ITU contract specifically includes preprinting activities, such as the Comp-Edit operations, while the jurisdictional clause in the GAIU agreement limits GAIU's jurisdiction to actual printing processes. GAIU argues that contractual language clearly favors award of the disputed work to employees represented by it, since its contract specifically covers the VariTyper classification, which will be replaced by the Comp-Edit system.

Despite the limited construction that the Employer and ITU place on the GAIU contract's jurisdictional clause, we note that GAIU represents certain employees, such as the employee classified as a VariTyper, who engage in preprinting work. Accordingly, we find that both contracts present a legitimate basis on which to claim the work, and that this factor does not favor an assignment to the employees in one unit over those in the other.

2. Employer, area, and industry practice

The Employer and ITU contend that employers in the printing industry have consistently assigned operation of the type of equipment at issue to employees represented by ITU. Paul Stewart, president of ITU, testified that, at two other operations in the Dayton area where similiar equipment was introduced into a plant with ITU and GAIU bargaining units, operation of this equipment was assigned to ITU-represented employees. Jack Boris, an International field representative of ITU's Inter-

[5] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[6] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

national Union, testified that ITU locals have uniformly been given jurisdiction over computerized equipment. Moreover, Ralph Johnson, the Employer's assistant vice president for corporate industrial relations, stated that the Employer operated other, similiar systems at its plants around the Nation, and that the Employer always assigned the work to employees with skills similar to those possessed by ITU members. He added that in the Employer's Los Angeles plant, at which there are both ITU and GAIU bargaining units, operation of the Comp-Edit system has been assigned to ITU-represented employees.

GAIU argues that, in a number of plants in the Dayton area, it has jurisdiction over work similar to that in dispute herein. However, in none of those plants was GAIU awarded jurisdiction where another union which represents printing employees also represented a bargaining unit in the plant.

For the reasons set forth above, we find that this factor favors an award of the disputed work to employees represented by ITU.

3. Job impact

The Comp-Edit operator will be performing typesetting work previously performed on various typesetting equipment, including linotype machines operated by ITU-represented employees and VariTyper and phototypesetter machines operated by GAIU-represented employees. The Employer estimates that, based on the amount and type of work that will be performed on the Comp-Edit machine rather than on existing typesetting equipment, award of this work to GAIU-represented employees would result in the layoff of three or four ITU members, totaling approximately one-half of the ITU complement at the plant, while an award to ITU-represented employees would result in no job loss to GAIU members. GAIU disagrees, contending that award of the work to ITU-represented employees would leave the VariTyper without any work. Even assuming, *arguendo*, that GAIU is correct in its contention, we find that the factor of job impact favors an award of the disputed work to employees represented by ITU.

4. Economy and efficiency of operations

Employer and ITU argue that the present linotype operators, represented by ITU, would be better able to operate the Comp-Edit machine than GAIU-represented employees. They assert that the linotypists' skills are directly transferable to the Comp-Edit operation, while none of the present GAIU-represented employees possesses and uses all of the skills required for operating the Comp-Edit machine. In particular, linotypists have a superior knowledge of typestyles and fonts, and are better able to visualize the page of type that is set because the end product of the linotype operation is a ready-to-print representation of the desired copy. In contrast, the VariTyper and the phototypesetter, represented by GAIU, produce a single, continuous line of type, which is then cut and pasted by other employees to create a finished product ready for printing.

In addition, the Employer and ITU argue that award of this work to ITU-represented employees would allow the Employer greater flexibility, since these employees could be assigned to assist in linotype operations if the Employer had no work for the Comp-Edit machine, while other work could not be arranged for GAIU-represented employees.

GAIU denies the Employer's and ITU's assertions, and contends that the work should be assigned to GAIU-represented employees because the Comp-Edit machine is located in the art department of the plant, whose employees are represented by GAIU, while the linotype supervisor is located on another floor of the plant.

We find the arguments of the Employer and ITU compelling in this regard, and accordingly find that the factor of economy and efficiency of operations favors an award of the disputed work to employees represented by ITU.[7]

5. Employer assignment and preference

The Employer has assigned the work in dispute to its employees represented by ITU and prefers that assignment. This factor favors an award of the work to those employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors, we conclude that employees who are represented by ITU are entitled to perform the work in dispute. We reach this conclusion relying on employer, area, and industry practice, job impact, economy and efficiency of operations, and employer assignment and preference. In making this determination, we are awarding the work in dispute to employees represented by International Typographical Union, Dayton Typographical Union, Local No. 57, AFL-CIO, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

[7] In making this finding, we note that the Board does not regard differences in wage rates as a factor in determining economy and efficiency of operations. *Theatrical Protective Union No. 1, I.A.T.S.E., supra; International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 229, AFL-CIO (M. H. Golden Construction Co.)*, 218 NLRB 1144, 1148 (1975).

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees employed by The Reynolds and Reynolds Company who are represented by International Typographical Union, Dayton Typographical Union, Local No. 57, AFL-CIO, are entitled to perform the operation of the phototypesetting machine referred to as the Comp-Edit machine manufactured by the A-M International Company.